

SUBJECT: Offense for text messaging to solicit minors

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Peña, Riddle, Escobar, Mallory Caraway, Pierson
0 nays
4 absent — Vaught, Hodge, Moreno, Talton

WITNESSES: For — Kevin Hanes, Henderson County Sheriff's Department; Gina Magee; Debbie VanDeman
Against — None
On — Shannon Edmonds, Texas District and County Attorneys Association

BACKGROUND: Under the offense of on-line solicitation of a minor, Penal Code sec. 33.021 (b), it is an offense for a person 17 years old or older to use the Internet, electronic mail, or a commercial on-line service intentionally to communicate in a sexually explicit manner with a minor or to distribute sexually explicit material to a minor, if the act was done with the intent to arouse or gratify the sexual desire of anyone. This offense is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000), unless the minor is younger than 14 years old or is believed to be under 14, in which case it is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000).

Under Penal Code sec. 33.021(c), it is an offense to use the Internet, electronic mail or a commercial on-line service knowingly to solicit a minor to meet another person, with the intent that the minor will engage in sexual contact, sexual intercourse, or deviate sexual intercourse. This offense is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000), unless the minor is younger than 14 years old or is believed to be under 14, in which case it is a second-degree felony.

Penal Code, sec. 21.12 makes it a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) under the offense of

improper relationship between an educator and student for an employee of a school to engage in sexual contact, sexual intercourse, or deviate sexual intercourse with a student.

DIGEST:

HB 401 would add the use of text messages or other electronic message services to the ways in which the offense of on-line solicitation of a minor could be committed.

The bill also would expand the offense of improper relationship between educator and student to include on-line solicitation of a minor, regardless of the age of the victim.

The bill would take effect September 1, 2007, and would apply to offenses committed on or after that date.

SUPPORTERS
SAY:

HB 401 is necessary to address the serious problem of people using new technology to solicit minors on-line and the problem of teachers using new technology to further improper relationships with students. While it is a crime to use certain types of technology to solicit minors and a crime for teachers to have sexual relationships with students, limited definitions of both crimes are a shortcoming in the current law.

HB 401 would close a loophole in current law, which does not list text messaging as one of the means of communication that could define on-line solicitation of a minor. Text messaging is an increasingly common way for young people to communicate, and those wishing to harm children have figured this out. These adults use text messaging to try to build relationships with minors so that they can lure them into sexual relationships. One Texas student received more than 80 explicit text messages from a teacher attempting to solicit her. The offense of on-line solicitation of a minor is designed to allow adults to be charged with an offense before sexual contact occurs, and HB 401 would help ensure that if adults used text messaging to solicit a minor, it would fall under the offense. The offense of criminal solicitation of a minor, found in Penal Code sec. 15.031, is limited to the most serious and violent crimes and would not cover all the actions contemplated by CSHB 401.

HB 401 also would help ensure that if the crime of improper relationships between teachers and students involved on-line solicitation, it more appropriately could be punished than under current law. The crime of improper relationship between a teacher and student is a second-degree

felony, and some on-line solicitation offenses are only state jail or third-degree felonies. Including on-line solicitation of minors within the offense of improper relationships between teachers and students – which would allow them to be punished as second-degree felonies – would recognize that the on-line solicitation of minors was an especially serious crime if it involved teachers and students.

There is no better use of state correctional resources than to protect children from sexual offenses by adults. The interaction between two offenses that would be established by HB 401 would give prosecutors more flexibility to charge a perpetrator with either crime or both crimes, depending on the facts and the strength of the evidence. The state uses this technique of placing one offense within another in other situations in which the seriousness of the offenses calls for flexibility to ensure proper prosecution of all offenses. For example, robbery involves both theft and assault and can be used when these crimes are especially serious.

OPPONENTS
SAY:

HB 401 is unnecessary because the actions described by the bill already are illegal and already appropriately punished. On-line solicitation of a minor, criminal solicitation of a minor, and improper relationship between educators and students cover serious offenses involving luring minors into sex and other serious crimes.

The current offense of improper relationship between educators and students is designed to capture sexual acts between teachers and students and is properly limited to offenses involving sexual contact and intercourse. Expanding this crime to include on-line solicitation of a minor would be confusing and an unwarranted enhancement of the penalty for solicitation.

The fiscal note on HB 401 says that the bill is expected to increase demands on the correctional resources of the counties or the state due to an increase in offenses. The state correctional system is operating at capacity now, and many counties are as well. These beds should be reserved for the most serious, violent, and threatening offenders. Any increase in demand for correctional beds could have a serious fiscal impact on the state.